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14 Attorneys for Defendants
15 CAMBRIDGE DISPLAY TECHNOLOGY LIMITED
16 and CDT OXFORD LIMITED
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18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 SAN FRANCISCO DIVISION

21 _____
22 14 SUNNYSIDE DEVELOPMENT
23 COMPANY LLC,
24

25 Plaintiff,

26 vs.
27 15 CAMBRIDGE DISPLAY TECHNOLOGY
28 LIMITED, CDT OXFORD LIMITED,
OPSYS LIMITED, and JOHN DOES I
through V,

29 Defendants.

30 No. C-08-1780-MHP

31 **RESPONSE OF DEFENDANT
32 CAMBRIDGE DISPLAY
33 TECHNOLOGY LIMITED TO
34 PLAINTIFF'S ADMINISTRATIVE
35 MOTION PURSUANT TO CIVIL
36 LOCAL RULE 79-5(d) [Dkts. 37, 38,
37 41, 42]**

38 Date: September 8, 2008

39 Time: 2:00 p.m.

40 Courtroom 15, 18th Floor

41 Hon. Marilyn Hall Patel

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1 By an administrative motion (Dkt. 37, 38, 41) filed pursuant to Civil Local Rule 79-
 2 5(d), plaintiff Sunnyside Development Company, LLC (“Sunnyside”) raised the issue of
 3 whether Exhibits 1 through 3 to the “Affirmation of Christoph Heisenberg” (Dkt. 38)
 4 should be filed under seal, having been designated as confidential by non-party Ernst &
 5 Young (“E&Y”), from which Sunnyside had obtained these documents via subpoena.

6 Defendant **CAMBRIDGE DISPLAY TECHNOLOGY LIMITED** (“CDT Ltd.”)
 7 hereby states that, having now reviewed the documents and consulted with E&Y, it does
 8 not believe that the documents are sealable within the meaning of Civil Local Rule 79-5(d)
 9 and therefore does not object to their being made part of the public record.

10 CDT Ltd. notes that earlier today the Court signed (as Dkt. 42) Sunnyside’s
 11 proposed order granting the administrative motion (Dkt. 41). As officers of the Court,
 12 however, we wish to state that we do not believe the documents are sealable. It appears that
 13 the entry of Dkt. 42 was an inadvertent error; the order refers to “good cause having been
 14 shown in the submission in support of the motion filed by defendants Cambridge Display
 15 Technology Limited and CDT Oxford Limited [and non-party Ernst & Young LLP]” when
 16 in fact those entities made no submission in support of the administrative motion.

17 By stating that the documents need not be sealed, CDT Ltd. does not suggest or
 18 stipulate that these documents can be relied on by Sunnyside, or are properly considered by
 19 the Court in ruling on the motion to dismiss made by CDT Ltd. pursuant to Fed. R. Civ. P.
 20 12(b)(6). The documents are quite obviously outside the four corners of Sunnyside’s
 21 complaint and are not the sort of documents of which judicial notice can be taken. *See In re*
 22 *Calpine Corp. Sec. Litig.*, 288 F. Supp. 2d 1054, 1076-77 (N.D. Cal. 2003); *see generally*
 23 *Metzler Inv. GmbH v. Corinthian Colleges, Inc.*, --- F.3d ----, No. 06-55826, 2008 WL
 24 2853402, at *1 & n.1 (9th Cir. July 25, 2008). In addition, Sunnyside has not asked that
 25 judicial notice be taken of them. But those are merits issues with respect to the motion to
 26 dismiss, and will be addressed at page 1 of that reply. For purposes of this motion under
 27 Civil Local Rule 79-5(d), CDT Ltd. simply states that the documents need not be filed
 28 under seal.

1 Dated: August 25, 2008.

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7 By _____ /s/ Bruce A. Ericson

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